

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.
HERMOGENES MALLARI AND THE FIRST NATIONAL SURETY & ASSURANCE CO., INC., DEFENDANTS AND APPELLEES.**

G. R. No. L-11862. August 29, 1958

Ponente: FELIX, J.

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FELIX, J.:

On June 1, 1951, Hermogenes Mallari applied for and was granted a palay crop loan in the sum of P2,000.00 for which he signed 2 promissory notes, one dated June 1, 1951, for P1,200.00 and another dated June 26, 1951, for the sum of P800.00, payable on or before April 30, 1952 (Exhibits A & B). To secure the payment of the aforesaid loan, Mallari executed, in favor of the bank, a chattel mortgage on standing crops, (400 sacks of palay of the 1951-52 crop), to be harvested from the properties covered by Transfer Certificate of Title No. 6942 and Tax Declaration Nos. 11041 and 9575 located at Banga, Calingucan and Lawy, Capas, Tarlac, which he was allegedly leasing from Vicente de Guzman, Francisco Castañeda and Antonio Naguiat (Exh. C). And as further required, the borrower likewise filed a bond in the amount of P2,000.00 subscribed by the First National Surety & Assurance Co., Inc. (Exh. D).

As Mallari failed to settle his obligation upon the maturity of the promissory notes, the bank filed on May 27, 1954, a complaint with the Justice of the Peace Court of Tarlac against Hermogenes Mallari and the surety company (Civil Case No. 384) praying that defendants be ordered to pay the plaintiff the sum of P2,237.00, representing the principal and the accrued interest at the rate of 6% per annum as of May 27, 1954, until the whole obligation was paid; for attorney's fees equivalent to 10% of the loan and for costs. And as prayed by plaintiff, a writ of attachment was issued by the court in virtue of which 290.42 sacks of palay deposited in the name of Hermogenes Mallari in the facoma warehouse at Tarlac, Tarlac, which were considered sufficient to pay off the amount demanded of him, were attached by the Deputy Provincial Sheriff of said province. Defendants filed their answer denying all the material averments of the complaint and setting up the defense that the obligation had not yet matured as defendant Mallari was given by the Bank an extension of time or up to the end of May, 1954, within which to settle said obligation. This allegation was denied by plaintiff in its reply.

On July 19, 1954, the Bank filed a petition praying for the lifting of the order of attachment for the reason that the parties had come into an agreement as to the settlement of the account, which was granted by the court. Hence, the writ of attachment issued therein was correspondingly dissolved.

On June 4, 1955, the Court finding that the plaintiff accepted the offer of a certain Conrado Guanzon, allegedly the employer of defendant Mallari, to pay the obligation of the latter under certain terms, held that such agreement constituted a novation of the original contract and dismissed the complaint without prejudice to any right that plaintiff may have against Conrado Guanzon. Thus, plaintiff brought the matter to the Court of First Instance of Tarlac.

In their answer to the original complaint, defendant surety company contended that it was not aware much less

consented to the lifting of the order of attachment; that under the bond, the liability of the surety would expire on June 1, 1952; that as after the harvest for the agricultural years 1951-52 when defendant Mallari failed to pay the obligation the plaintiff took no step to enforce the liability of said surety, no action could at this time be filed against the latter especially when its liability under the bond had already expired. As cross-claim, the surety company prayed that in case it would be adjudged liable, defendant Mallari be ordered to pay to said company the sum of P2,460.70 with interest at 12% per annum, from May 27, 1954, until fully paid; for attorney's fees in the sum of P369.10 and costs.

On October 30, 1956, the parties submitted an agreed stipulation containing, among others, the following facts:

"On June 30, 1954, Mr. Conrado Guanzon of San Fernando, Pampanga, addressed a letter to the Manager, Tarlac branch, Philippine National Bank, as follows:

'San Fernando, Pampanga
June 30, 1954

Mr. E. R. Balocating
Branch Manager, PNB
Tarlac, Tarlac

Dear Mr. Balocating:

With reference to the 290 cavanese of palay which you foreclosed under the name of Mr. Hermogenes Mallari, my overseer, I wish to make this arrangement with you, pay the sum of P1,000.00 to Tarlac Branch within this month, another payment of P500.00 by September, and the balance thereof in February 1955, provided that upon payment of the P1,000.00 aforesaid, the foreclosed palay be released to me.

This arrangement, I believe, will save us from further trouble and expenses. If you are agreeable to this arrangement, please notify me at once at the above address.

Thanking you for your kind cooperation, I am

Very truly yours,
(Sgd.) CONDRADO GUANZON

This letter of Mr. Guanzon was referred to the Manila Office of the plaintiff, and the Manager of the Branches Department in Manila, wrote to the Manager, Tarlac Branch, the following:

'June 30, 1954

Mr. Balocating
(Manager, Tarlac Branch)

If above contention is true and since the party promised to pay P1,000.00 and P500.00 on September, you may release the 290 cavanese of palay as requested provided the P1,000.00 is paid.

Thank you.

(Sgd.) M. M. ILano
Manager, Branches Department'

On June 30, 1954, Conrado Guanzon paid the sum of P1,000.00 to the Tarlac Branch, Philippine National Bank, Exhibit "2", and on July 19, 1954, the plaintiff filed a petition to lift the Order of Attachment, a copy of which was not furnished the defendants. The Justice of the Peace Court of Tarlac in its Order dated July 20, 1954, lifted the writ of attachment on the 290.42 cavanese of palay. No copy of the order was likewise furnished

the defendants. After the payment of P1,000.00 by Conrado Guanzon he did not make further payments and the claim now is P1,479.93 as per the statement of account, Exhibit "E", presented by the plaintiff".

Based on the aforesaid agreement, the Court rendered judgment on November 6, 1956, finding that there was a novation of the contract brought about by the alteration of the principal conditions of the original obligation and the substitution of a new debtor in place of defendants. Thus, the appeal was dismissed without costs. From this decision, plaintiff brought the case on appeal to this Court on the sole issue of whether or not the acceptance by the bank of the offer of Conrado Guanzon constituted a novation of the contract between the former and the original debtors.

While novation is one of the modes of extinguishing obligations, it does not necessarily result in the extinction of the obligation. Novation produce only a relative extinguishment of the obligations in the sense that by this mode, obligations are not extinguished but rather substituted by others (8 Manresa 427). Novation under the rules of the civil law, whence the term has been introduced into the modern nomenclature of the common law jurisprudence, was a mode of extinguishing one obligation by another; the substitution, not of a new paper or note, but of a new obligation in lieu of an old one, the effect of which was to pay, dissolve, or otherwise discharge it (Words and Phrases, Vol. 5, p. 4848). And on the same subject of novation, our Civil Code provides:

"Art. 1291. Obligations may be modified by:

- (1) Changing their object or principal conditions;
- (2) Substituting the person of the debtor;
- (3) Subrogating a third person in the rights of the creditor."

From the foregoing it may be seen that there is novation where another is substituted in place of a debtor, or somebody is surrogated in the rights of the creditor, or where there is a change in the object of the obligation or an alteration or modification of its principal conditions.

In the case at bar, there is no controversy that Conrado Guanzon, by his offer of June 30, 1954, assumed the obligation of Hermogenes Mallari, undertaking to settle the same by paying P1,000.00 upon the release of the attached produce of the land, P500.00 in September, 1954, and the balance of the entire obligation payable in February of the succeeding year. It must be remembered that under the 2 promissory notes signed by Mallari, he was unqualifiedly obligated to pay the sum of P2,000.00, together with the corresponding interests thereon, on or before April 30, 1952 (Exhs. A and B). The acceptance, therefore, by the Bank of the offer of Guanzon under the terms specified by him constituted not only a substitution of debtor but an alteration or modification of the terms and conditions of the original contract. It is argued, however, that novation cannot be presumed and that the bank, in accepting the aforesaid offer of Guanzon, merely accepted an additional debtor without releasing the original debtor. In this regard, Article 1292 of the Civil Code states:

"Art. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligations be on every point incompatible with each other."

Under the aforequoted provision, novation of a contract may be effected not only by expressly declaring that the parties intended such a change but also where the new obligation is in all respect incompatible and cannot stand side by side with the former one. It needs no eloquence or forceful argument to arrive at the conclusion that the obligation of Guanzon under his agreement with the Bank essentially and entirely wiped out the original obligation of Mallari under the 2 promissory notes. Consequently, and considering that under the provisions of the bond, the liability of the surety expired on June 1, 1952, without any claim having been made against said bond,

the lower Court committed no mistake in dismissing the complaint against the defendants.

Wherefore, the decision of the lower Court of November 6, 1956, is hereby affirmed, with costs against appellant. It is so ordered.

Paras, C. J. Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

CONCURRING

BENGZON, J.:

I concur in the result. I would absolve the surety on the ground of substitution of debtor without its consent.

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